

PUBLIC LAW BOARD NO. 2774

Award No. 7
Case No. 13

PARTIES
TO
DISPUTE

Brotherhood of Maintenance of Way Employees
and
The Atchison, Topeka & Santa Fe Railway Company

STATEMENT
OF CLAIM

- "1. That the Carrier violated the parties Agreement when it unilaterally dismissed Southern Division Trackman P.L. Broadnax from service December 7, 1979, said dismissal being arbitrary, capricious and an abuse of discretion and also not supported by the record.
2. That Carrier now compensate P.L. Broadnax for all wage loss beginning December 7, 1979 until his reinstatement June 16, 1980 and/or otherwise made whole."

FINDINGS

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

The record indicates that Claimant was dismissed from service for allegedly threatening members of the gang and furnishing false information with respect to an alleged injury; this dismissal followed an investigation held on December 7, 1979. Claimant was reinstated on a leniency basis without pay for time lost effective June 16, 1980. Thus, the sole issue before this Board is the matter of whether he should be compensated for time lost between December 7, 1979 and June 15, 1980.

The record of the investigation herein reveals that a number of employees were involved in the incident together with Claimant. That there was an element of harassment and horseplay involved is beyond question. The conduct of the investigation leaves the Board with the impression that it was not handled objectively and fairly with respect to Claimant. Without reaching the question of guilt, the Board is of the opinion that the conduct of the Hearing Officer in itself warrants a sustaining award herein. It is clear that he did not fully perform the function of adducing all the facts which related

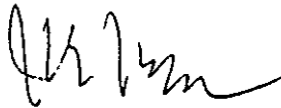
to the incident in question in a fair and impartial manner. Thus, the claim must be sustained.

AWARD

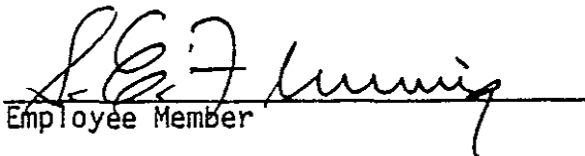
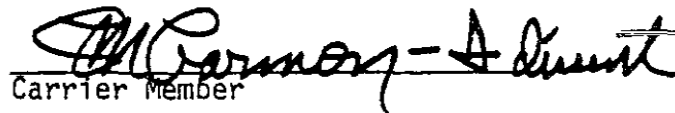
Claim sustained; Claimant will be reimbursed for time lost between December 7, 1979 and June 15, 1980

ORDER

Carrier will comply with the Award herein within thirty (30) days from the date hereof.



I.M. Lieberman, Neutral-Chairman


Employee Member
Carrier Member

, 1981
Chicago, IL